

PROPOSAL SUBMITTED

BY THE

TOWN ATTORNEY'S OFFICE

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA PROVIDING FOR COST RECOVERY TO REIMBURSE THE TOWN OF DAVIE FOR SPECIAL COSTS INCURRED BY THE TOWN IN THE PROCESSING OF APPLICATIONS FOR DEVELOPMENT PERMITS, CONTAINING PROVISIONS FOR COST RECOVERY ACCOUNTS; PROVIDING FOR IMPLEMENTATION OF THE COST RECOVERY PROGRAM; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council of the Town of Davie wishes to assure that the Town fairly assesses Developers for the cost of providing the services necessary to issue development permits and services; and

WHEREAS, special services in connection with the process of issuing development permits, development services and developer matters are sometimes reasonably required by Staff, including the retaining of outside consultants or incurring special services from Staff; and

WHEREAS, the current system of fees, the development permitting process and providing the services related to development unfairly subsidizes the cost involved in the issuance of development permits and developer matters with taxpayer revenues; and

WHEREAS, this Cost Recovery Ordinance fairly redistributes the cost involved to the Town in providing development services and developer matters; and

WHEREAS, this Cost Recovery Ordinance is believed to be fair and equitable to both taxpayers and developers as concerns the cost of development services and developer matters; and

WHEREAS, the Cost Recovery System for Special Services as set forth in this Ordinance, is deemed desirable to the Town as concerns the special cost associated with development services and developer matters;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. Definitions:

“Cost Recovery Account”. An account with the Town of Davie, funded by an applicant for a development permit, to pay for the costs of special development services.

“Project Account”. An applicant account under the general Cost Recovery account in the Town’s accounting records relating to an application for Development Permit. A Project Account is the financial account associated with each application for Development Permit in the Cost Recovery Program.

“Special Services”. Services required by the Town Administrator, Town Attorney, Development Services Director, Town Engineer or other Town Department or employee or outside consultant, in drafting or working on development agreements, reviewing or drafting deed restrictions, or drafting or reviewing any special documents, including agreements, deeds, conveyances, security instruments, restrictive covenants, or special conditions, or other documentation necessary for the granting of a development permit or order or the providing of development services. This term shall also include any services of the Development Services Department, Public Works, Utilities Department, other Town departments, Town Attorney’s Office or Town Administration and Staff or outside consultants hired by Staff, in excess of those services normally required to review an application for development services, and include but are not limited to services in connection with review and processing of plat applications, land use plan proposed amendments, changes in zoning, applications for variances, site plans (including modifications and amendments), transportation and traffic issues, plans and reports, development of regional impact or regional impact orders, document review in developments involving unified control, environmental evaluations, reviews and studies, pre-permit and post-permit conferences

and project reviews.

SECTION 2. Recovery of costs of administrative review and processing.

- (a) The provisions contained herein are in addition to any presently existing or subsequently enacted permit or development review fees.
- (b) There is hereby imposed a charge for special services for processing and review of applications, submissions, or requests concerning proposed matters within the Town of Davie or concerning development, utilization, or improvement of realty in the Town of Davie, such charges to be equal in an amount to the Town's actual costs, in terms of time expended by outside consultants or staff in such review, including fringe benefits, directly related charges and the cost of administering this ordinance.
- (c) Applicants who file any application which in the determination of the Town Administrator or his/her designee necessitates special services shall pay prior to or at the time the application is made, an initial preliminary deposit which shall be credited toward the future amount charged for such special services and shall pay additional deposits as may be required from time to time. Payment shall be according to a *Schedule of Guidelines, Rates and Costs*, which shall be used in determining the amount of deposits and calculations of costs. This schedule must be approved by Resolution by the Town Council and may be amended from time to time.
- (d) When the applicant is required to make the initial deposit, a financial account for said applicant's application (the "project account") will be opened and maintained throughout the entire review process. The "cost recovery account" and resulting "project accounts" set up pursuant to this ordinance refer to separate accounts in the accounting records of the Town and shall not be construed to require the

establishment of a separate bank account. Monies received will be deposited in a single, non-exclusive bank account and adequate accounting records will be maintained to reflect and control the restricted allocation of these funds.

- (e) When (1) the applicant receives a certificate of occupancy, or (2) the Development Services Department determines that no further action is necessary for the review and processing of the application, or (3) the applicant voluntarily withdraws, the project account will be closed after all outstanding charges are paid. When a project account is closed, any remaining funds shall be refunded to the applicant depositing same, no later than two (2) months after the project account closing date. If any amounts are due to the Town when the project account is closed, the Town will charge the applicant for the balance due, and the applicant shall pay the balance (or contest it as set forth in this ordinance) before any further action is taken by the Town on the application. The project account will be monitored on a periodic basis. Whenever the account balance falls below 50% of the initial deposit, a supplemental deposit will be required before any further review or processing continues. The applicant making the initial deposit will be notified when a supplemental deposit will be required. The amount of the supplemental deposit will be forty (40%) percent of the initial deposit. Several supplemental deposits may be necessary, depending on the complexity of the application. The need for an amount of all supplemental deposits will be calculated based on the amount of the initial deposit. The Town's staff and outside consultants who are involved in the provision of special services shall maintain records of the time expended and tasks conducted regarding each such request. The total costs established based upon the time expended and the applicable hourly rate, fringe benefits, and directly related

charges, shall be charged against the project account. The project account shall also be charged a 10% fee to reflect the costs of administering this program. All records of time expended, together with the corresponding costs shall be provided to the Town Administrator.

- (f) When the Town Administrator or his/her designee determines that special services will be required for an application, the amount of the initial deposit for the different types of applications shall be established, and from to time, amended by resolution of the Town Council. It is the expressed intent of the Town Council and the Mayor of the Town of Davie, Florida, in enacting this cost recovery program that the Town's costs of excess staff services, outside consultant services, and administration, as required or necessitated now or in the future of the Town's ordinances, resolutions, policies, or procedures shall be borne by the applicant initiating the special development services.
- (g) Any applicant who contends that the funds being charged pursuant to this cost recovery system are excessive or that the cost recovery system should not apply to that applicant, may appeal the decision of the Town Administrator or any funds being charged, to the Town Council who will hear said appeal within forty-five (45) days of said appeal. The decision of the Town Council on said appeal shall be final. During the time of such appeal, no development permit shall be processed or issued except in such cases where the developer pays to the Town the funds required in the cost recovery system, noting on said payment that they have been paid under protest subject to the appeal being undertaken by the applicant for a development permit.

- (h) This program shall not apply to applications which are originally initiated by or on behalf of the Town of Davie or another governmental entity acting in its governmental capacity; such as, but not limited to, Department of Transportation highway proposals review, review of Broward County transportation improvements, review of proposed amendments to the Broward County or other local land use plan, and review of developments of regional impact; provided however, that the initiating governmental entity does not charge the Town of Davie for its review, processing, and comment upon the Town of Davie's applications of a similar type or nature.
- (i) Except as provided herein, any notification provided in this section for supplemental deposits from the Town of Davie to an applicant initiating an application shall be deemed sufficient, if sent to such applicant or his or her agent by certified mail. It shall be the duty of applicants initiating applications to provide in the file for the application a continuously updated address and telephone number where said applicants or their agents can be reached for purposes of such notification. If an attempt to notify an applicant initiating an application or his or her agent is frustrated because such furnished phone numbers or addresses were not correct or up to date when the notification attempt was made, such frustrated attempt shall be deemed sufficient notice for purposes of this section.

SECTION 3. Should any part of this Ordinance be declared unenforceable by a court of law, that shall not affect the remainder hereof which shall still remain in full force and effect.

SECTION 4. This Ordinance shall be made a part of the Town of Davie Code and the provisions herein may be renumbered for such purpose.

SECTION 5. This Ordinance shall take effect upon its passage and adoption. The *Schedule of Guidelines, Rates and Costs* shall be established by separate Resolution.

SECTION 6. This Ordinance was adopted after a public hearing was held upon the subject matter hereof. Notice of hearing was published as required by law, which public hearing was held at _____ o'clock on the ____ day of _____, 2002, in the Town Council Chambers, Davie, Florida.

PASSED ON FIRST READING this _____ day of _____, 2002.

PASSED ON SECOND READING on this _____ day of _____, 2002.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002

DRAFT PROPOSAL

SUBMITTED BY THE

DEVELOPMENT SERVICES

DEPARTMENT

Chapter 18

Cost Recovery Program

Article I. GENERAL PROVISIONS

Sec. 18-1. Title

These regulations shall be known and referred to as the Town of Davie Cost Recovery Program and shall include all associated Fee Schedules referenced herein.

Sec. 18-2. Legislative Purpose and Intent

- (A) The Davie Town Council has hereby determined that the costs related to the review and processing of development applications shall not be subsidized by the general taxpayer and citizenry of the Town. Therefore, the Town has determined that the most practical and consistently accurate method of defraying the costs of development review and processing functions is through the assessment of fees based upon the actual time expended by Town Employees and directly associated expenses including but not limited to advertising and legal fees.

Sec. 18-3. Definitions

- (A) When used in this Chapter, the following words shall have the meanings ascribed herein unless the text indicates otherwise:

Alternate Cost Recovery. A fast track method of Cost Recovery whereby the applicant of a development application opts to utilize consulting services to review its development application in conjunction with Town staff. The Town would still recover their costs with Town staff serving as project manager and secondary reviewers of the application.

Cost Recovery Account. For accounting purposes an account with the Town of Davie financed by an applicant for the purpose of covering costs incurred during the review and processing of a development application.

Cost Recovery Program. A program established for recovering the full costs of reasonably borne expenses related to the review and processing of development applications such that general revenues are not diverted from general services of a broad nature and thereby utilized to subsidize unfairly and inequitably the resulting development review costs.

Direct Costs. Those expenses which can be charged directly as a part of the cost of a product or service or a Department or Operating Unit as distinguished from overhead and other indirect costs which must be prorated among several products or services, departments or operative units.

Exempted Entity. Any individual, partnership, corporation, developer or other association that qualifies for an exemption to the Cost Recovery Program due to its size or other exemption factor.

Fringe Benefits. Non Wage Benefits (e.g., Paid vacation, life insurance, pensions, etc.) and any other special terms and conditions and privileges of employment which may supplement regular salaries or wages whose cost are borne in whole or part by the Town.

Major Review Phases. Individual phases within the Town's development review processes including application submission, Development Review Committee (DRC/Review, Planning & Zoning Board/Site Plan Committee Review, and Town Council review and approval. In the case of the site plans, a major review phase includes final staff review and approval.

Professional Service Charges. Charges resulting from the use of consultants performing professional services as an alternative to the other methods constituting the Cost Recovery Program

Project Account. For accounting purposes a separate and singular applicant account under the general cost recovery account relating to a development application. A project account is the financial account associated with each development application in the Cost Recovery Program.

Supplemental Services. A deemed necessary service requested by an applicant and/or the Town Administrator or his/her designee for the proper processing of any development application including but not limited to drafting development agreements; reviewing or drafting deed restrictions, drafting or reviewing of special documents including agreements, deeds, conveyances, security instruments, restrictive covenants or special conditions; the preparation, review and analyses of traffic studies, environmental studies and legal analyses; and any action necessary for completion of the development application. This term shall also include any service provided by other Town Departments, Town Administrator or outside consultant in excess of those services normally required to review an application for development permit.

Sec. 18-4. Methods of Cost Recovery

(A) Cost Recovery efforts will be conducted by the Town under the following methods.

1. **Primary Processing Method.** This method requires the applicant to pay for all costs incurred by the Town as a result of employee time spent processing and review of the application (including fringe benefits) and direct costs and expenses attributed to the project.
2. **Fast Track Processing Method.** Under this method, an applicant's submission may be processed under two alternates indicated below.

(a) Priority Review – In this method, an application is processed under the primary processing method except that the applicant pays an additional fee to designate the application as a priority and the application is given this priority status over other filed applications under review.

(b) Alternate Cost Recovery – Based upon a fee schedule provided by the Town, an applicant selects a professional consultant services firm to perform the review of the applicant's development application. The applicant is responsible for professional service charges at the actual cost for the performance of the professional services plus all costs generated by the Town Staff as project managers, secondary reviewers and administrative oversight of the development application.

3. **Supplemental Services Method.** This Cost Recovery method is basically implemented as the primary processing method excepting that any type of consultant or legal expertise is utilized to supplement the primary method. All additional professional services are charged to the applicant at the actual cost for the performance of the professional service in concert with the Town's Fee Schedule for such services.

Sec. 18-5. Exemptions

- (A) An entity may elect to take an exemption from the Cost Recovery Program if it meets one or several of the criteria outlined in this section. When taking an exemption, the exempted entity shall be required to pay the review and processing fee set in the Town's Fee Schedule for the application type being processed.
- (B) An exempted entity may qualify for an exemption to the Cost Recovery Program if it meets one or more of the following criteria
 1. Single Family Property Owners;
 2. Applications for site plan modifications that expire after the one-year period;
 3. Building foot print of 20% or less per individual building on a site;
 4. An increase in impervious surface area less than 20% of the existing impervious area; and
 5. Development proposed by any tax-exempt status non-profit agency.

Sec. 18-6. Processing and Review

The following shall apply to the processing for development applications:

- (A) **Fees.** Applicants shall be required to pay initial filing fees per the Town's Fee Schedule. If additional fees are necessary, the applicant will be asked to pay such fees on or prior to each major review phase of the Town's processing procedures.
- (B) **Refunds.** In the event that an application is withdrawn within 30 calendar days after an application submittal, non-expended remaining funds will be refunded. No refund will be allowed after this 30-day period.
- (C) **Determination and Timing of Scope of Work and Fees.** The Town shall provide the applicant with a reasonable estimate of any necessary supplemental services within a 30-day time period after the initial application filing. The foregoing should not preclude the Town from requesting any additional supplemental services as may be determined throughout the review process.

Sec. 18-7 Dispute Resolution Procedures

If any dispute or difference in interpretation arises between the Town and/or the applicant under this ordinance or during processing of an application or related approvals, then a dispute resolution process may be invoked according to the following procedures:

- (A) Within five (5) working days after a request by the applicant and/or the Town, the Director of Development Services shall review the disputed matter and make a recommendation to resolve this matter to the affected parties;
- (B) Any party may request within five (5) working days after the Development Services Director's determination that the matter be reviewed by the Town Administrator.
- (C) Processing fees for appeals to the Development Services Director and/or Town Administrator shall be paid by the applicant (10% of the original filing fee, pursuant to the Fee Schedule)

Sec. 18-8. Accounting

- (A) The Town's Finance Department shall establish an account to be known as the Town's Cost Recovery account.
- (B) At the time of development application submittal and provision of the initial deposit, a project account shall be established for the development application in accordance with the Town's internal accounting procedures. As indicated in Sec. 18.6(A) of this Chapter, additional deposits are required of the applicant at each major review phase of the application's processing.
- (C) At the Town Council major review phase the applicant will be required to pay all additional costs in arrears, prior to the item being scheduled before Town Council. Any

additional costs resulting from Town Council review shall be paid upon invoice by the Town. No building permit shall be issued by the Town until all cost obligations are satisfied by the applicant.

Sec. 18-9. Monitoring and Evaluations

The purpose of this section is to ensure that the Cost Recovery Program is recovering the full costs reasonably borne by the taxpayers of the Town of Davie for Development Review applications through a systematic process established to provide for quarterly monitoring of the overall Cost Recovery Program; and

Through the Cost Recovery Program, applicants will be provided with detailed reports indicating the reviews conducted, the charges accrued and the remaining account balances to ensure predictability and efficiencies within the process.

(A) Cost Recovery Program Monitoring.

1. On a quarterly basis, the Town of Davie shall conduct a review of the Cost Recovery Program and document the following:
 - a. The direct costs of development review, describing and detailing the total hours spent per project account including but not limited to: Town staff utilized, professional services utilized, Town Attorney time, and any other direct costs associated with an application.
 - b. The administrative costs of development review, describing and detailing the total hours spent per project account including, but not limited to: Finance Department tracking and processing, administrative review, and dispute resolution, if any.
 - c. The staff time and associated billing rates of development review, describing and detailing the following: hours spent per project account, hours spent on the cost recovery program, and professional services utilized and their associated costs.
 - d. The revenues collected through the cost recovery program, describing and detailing the amounts collected per cost recovery account and the amounts generated on a weekly, monthly, and quarterly basis.

The monitoring is to ensure that all costs expended by the Town are being adequately covered to offset additional reliance on taxpayer's dollars for development review.

- (B) **Program Evaluation.** A monitoring report, based on the above documentation, shall be used to routinely evaluate the success of the Cost Recovery Program to ensure that the overall hours spent by Town Staff and professional services is equal to the hourly rate, plus benefits (if any) paid and received by the Town and charged for professional services under the supplemental services method.
- (C) **Project Account Monitoring.** Throughout the development review process, periodic monitoring of the project account shall be conducted by the assigned project manager. A written report will be presented to the applicant indicating the staff hours spent on the project, the hourly rates accrued through project review, the remaining balance of account, and the remaining anticipated review.